

James Madison to Edmund Randolph, March 10, 1784. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.

TO EDMUND RANDOLPH. MAD. MSS.

Orange, March 10th., 1784.

My dear friend, —Your favor of the 27th. Jany. was safely delivered to me about a fortnight ago, and was recd. with the greater pleasure, as it promises a continuance of your friendly attention. I am sorry that my situation enables me to stipulate no other return than sincere & thankful acknowledgments.—On my arrival here which happened early in Decr. I entered as soon as the necessary attentions to my friends admitted, on the course of reading which I have long meditated. Co: Litt: in consequence & a few others from the same shelf have been my chief society during the Winter. My progress, which in so short a period could not have been great under the most favorable circumstances, has been much retarded by the want of some important books, and still more by that of some living oracle for occasional consultation. But what will be most noxious to my project, I am to incur the interruptions wch. will result from attendance in the Legislature, if the suffrage of my County should destine me for that service, which I am made to expect will be the case. Among the circumstances which reconcile me to this destination, you need not be assured that the opportunity of being in your neighborhood has its full influence.

I have perused with both pleasure and edification your observations on the demand made by the Executive of S. C. of a citizen of this State.¹ If I were to hazard an opinion after yours, it would be that the respect due to the chief magistracy of a confederate State,

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enforced as it is by the articles of Union, requires an admission of the fact as it has been represented. If the representation be judged incomplete or ambiguous,

explanations may certainly be called

1 George Hancock, a citizen of Virginia, assaulted Jonas Beard, a justice of the peace and member of the legislature of South Carolina. The Governor of South Carolina demanded Hancock's surrender from the Governor of Virginia. under the fourth article of the confederation, charging the assault as a high misdemeanor. Randolph, as Attorney General of Virginia, thought that Virginia had a right to insist upon proof of Hancock's guilt before taking action, but that South Carolina's definition of a misdemeanor must be admitted by Virginia, and that flight ought not to secure one from punishment. Randolph to Jefferson, January 30, 1784, Conway's *Randolph*, 51.

for, and if on a final view of the charge, Virginia should hold it to be not a casus fœderis, she will be at liberty to withhold her citizen, (at least upon that ground,) as S. C. will be to appeal to the Tribunal provided for all controversies among the States. Should the Law of S. C. happen to vary from the British Law, the most difficult point of discussion I apprehend will be, whether the terms "Treason &c." are to be referred to those determinate offences so denominated in the latter code, or to all those to which the policy of the several States may annex the same titles and penalties. Much may be urged I think both in favor of and agst. each of these expositions. The two first of those terms coupled with "breach of the peace" are used in the 5 Art: of the Confederation, but in a way that does not clear the ambiguity. The truth perhaps in this as in many other instances, is, that if the compilers of the text had severally declared their meanings, these would have been as diverse as the comments which will be made upon it.

Waving the doctrine of the confederation, my present view of the subject would admit few exceptions to the propriety of surrendering fugitive offenders. My reasons are these.

1. By the express terms of the Union the citizens of every State are naturalized within all the others, and being entitled to the same privileges, may with the more justice be

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subjected to the same penalties. This circumstance materially distinguishes the citizens of the U. S. from the subjects of other nations not so incorporated. 2. The analogy of the laws throughout the States, and particularly the uniformity of trial by Juries of the vicinage, seem to obviate the capital objections agst. removal to the State where the offence is charged. In the instance of contiguous States a removal of the party accused from one to the other must often be a less grievance, than what happens within the same State when the place of residence & the place where the offence is laid are at distant extremities. The transportation to G. B. seems to have been reprobated on very different grounds: it would have deprived the accused of the privilege of trial by jury *of the vicinage* as well as of the use of his witnesses, and have exposed him to trial in a place where he was not even alledged to have ever made himself obnoxious to it; not to mention the danger of unfairness arising from the circumstances which produced the regulation. 3. Unless citizens of one State transgressing within the pale of another be given up to be punished by the latter, they cannot be punished at all; and it seems to be a common interest of the States that a few hours or at most a few days should not be sufficient to gain a sanctuary for the authors of the numerous offences below "high misdemeanors." In a word, experience will shew if I mistake not that the relative situation of the U. S. calls for a "Droit Public" much more minute than that comprized in the fœderal articles, and which presupposes much greater mutual confidence and amity among the societies which are to obey it, than the law which has grown out of the transactions & intercourse of jealous & hostile nations.

Present my respectful compliments to your amiable lady & accept the sincerest wishes for your joint happiness of

Your affc. friend & obt. servt..

P. S. By my brother who is charged with this I send Chastellaux's work, de la Felicité public which you may perhaps find leisure to

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run through before May—also a notable work of one of the Representatives of the U. S. in Europe.